

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 959 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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**RAMABHAI SHIVABHAI BHANGI-THR'PAH-VINUBHAI JENABHAI VAGHARI & 2 -
Petitioner(s)**

Versus

STATE OF GUJARAT THR' PRANT OFFICER - Respondent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner(s) : 1 - 3.
MR SIRAJ GORI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 23/01/2006****ORAL JUDGMENT**

1.Rule. Learned AGP Shri Siraj Gori on advance copy waives service of notice of rule on behalf of respondent. At the request of learned advocates

appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged an order dated 19-03-2005 passed by the Deputy Collector, Mehsana. By the said order under the provisions of section 65 of the Bombay Land Revenue Code, management of land bearing city survey no.2004/343 admeasuring 21 Are 40 sq, mtrs. of Mehsana is taken by the Government. It is the case of the respondent that the land was not cultivated upon continuously for a period of more than three years. The impugned order records that despite notices and several adjournments no one was present for the petitioner. However, later on on 10-03-2005, the petitioner had given a written application and contended that in the land surrounding the land in question, there are many buildings due to which he could not carry out agricultural operations. He submitted that for his own residence, he has put in temporary construction and that he intends to make proper construction with permission after applying for conversion of the land in question to non-agricultural land. The Prant Officer, however, did not accept his defence.

3.The learned advocate Shri Mehul Shah for the petitioner submitted that the petitioner could not produce sufficient material on record to substantiate his contentions since earlier show cause notice was issued and served on Shri Haresh V. Joshi who is engineer and who had submitted the plans on behalf of the petitioner. He submitted that given an opportunity, he would produce further material to substantiate his contentions.

4.At the outset it may be noted that the petitioner has never raised any grievance about the notice being served to Shri Haresh V. Joshi for and on behalf of the petitioner. The learned advocate for the petitioner submits that the petitioner would accept the same as a good notice and would not insist on a separate notice being issued to him. However, considering the fact that the petitioner wishes to produce further material in support of his contentions in facts of the present case, I find that the petitioner deserves an additional opportunity. For the above purpose, the impugned order is set aside. The proceedings are remanded back to Prant Officer for fresh consideration and disposal in accordance with law, after permitting the petitioner to

produce additional evidence, if he so wishes. Since the petitioner is primarily responsible for the above situation, he will pay cost of Rs. 5,000/- to the respondent. The petitioner will cooperate for the early disposal of the remand proceedings.

5. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)

(raghu)